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June 14, 2019

VIA ECFS

Notice of Ex Parte

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage, WC Docket No. 18-155

Dear Secretary Dortch:

On Wednesday, June 12, 2019, the undersigned and Megan Delany of Dentons met with Irina Asoskov, Susan Bahr, Allison Baker, Lynne Engledow, Brendan Hanley, John Hunter, Christina Janne, Albert Lewis, Erik Raven-Hansen and Eli Wachtel of the Wireline Competition Bureau and Eric Burger, Octavian Carare, Grace Chuan, Richard Kwiatkowski, Eric Ralph, Emily Talaga and Shane Taylor of the Office of Economics and Analytics regarding the above referenced proceeding.

During the meeting, we explained HD Tandem's belief that geographic distinctions are the underlying cause of much of the arbitrage at issue in the pending docket.¹ We discussed how, as a non-geographic based intermediate carrier, HD Tandem is an example of a business model that is a market-based solution to geographically-driven arbitrage in the intercarrier compensation system. HD Tandem described how removing geography from the intercarrier compensation equation has driven a commercial marketplace based on the aggregation of direct connections² and intermediary voice traffic exchanges. HD Tandem pointed out that individual direct connections present practically infeasible mathematical complications and challenges, as multiple carriers in the market result in exponential increases in the amount of direct connections that would be required. In contrast, HD Tandem presents the necessary and critical value proposition by

¹ *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, 33 FCC Rcd. 5466 (2018) ("NPRM").

² In industry commercial negotiations, the aggregation of direct connections means "indirect directs" or "indirect direct connections."

physically connecting 54 carriers to 14 LECs for a total of 68 connections.³ Without HD Tandem's investment in such existing physical connections, physical connections between those carriers would require over 700 separate individual connections, as well as the accompanying contracts and points of billing.

We further explained that HD Tandem offers this aggregation of physical connections to carriers just as an individual direct connection might be offered, and with a commercially negotiated edge as part of the ultimate commercial agreement between the two companies. In describing this commercial exchange, HD Tandem explained that over 90% of the traffic that is sent to the 14 remote LECs referenced above is dispute free, complaint free and characterized by zero collection issues.

In addition, as part of this commercial negotiation, there are two separate ways to derive a rate - benchmarking to tariff a marketplace rate or the development of a rate through reciprocity. The carriers that work with HD Tandem have two pricing options: 1) pay a just and reasonable market-based rate; or 2) negotiate the exchange of traffic in reciprocity. Ultimately, if the carrier chooses not to work in reciprocity, that is their individual business choice to be connected via tariffed routes or other options that are available. While the motivations behind these business choices are not specified, in the case of AT&T, in choosing to keep its traffic on Aureon, it seems they are motivated by the sole purpose of dispute, considering they have lower priced higher quality routes that are conveniently located at their direction and request.⁴ Describing the current state of the commercial marketplace further, HD Tandem also noted that Aureon stated that it had lowered its rates to win some of HD Tandem's traffic, but was unsuccessful in doing so. HD Tandem explained its conclusion that this market reaction was because of price, quality and the efficiencies found in HD Tandem's state-of-the-art network.

In looking to the future and describing its vision of a national bill-and-keep reciprocal exchange, HD Tandem expressed concerns regarding proposed regulations because of the potential impact to both HD Tandem's current commercial agreements and its future growth to a national voice competitor. Specifically, Prong 1 in the NPRM presents a unilateral reversal of economics that will simply serve to shift arbitrage opportunities. With regards to Prong 2, we reiterated that the indirect direct connections offered by HD Tandem are a positive step, but that more could be done to promote a mutual exchange of traffic with commercially negotiated reciprocal terms.

HD Tandem further described what such a reciprocal bill-and-keep exchange might look like and what traffic HD Tandem would terminate on other carriers

³ This example highlights the states that are often highlighted as problematic states in the docket - Iowa and South Dakota. This example does not include connections or investments that HD Tandem has made in the other 23 states in which it operates.

⁴ In discussing AT&T's intercarrier compensation relationship with Aureon, we described the agreement that HD Tandem submitted on a confidential basis to the record, and the fact that HD Tandem hopes to expand its relationship.

networks in exchange for termination to HD Tandem's customers. We discussed that bill-and-keep could be seen as a rate of zero regulated on a specific set of carriers, or that bill-and-keep could be viewed as two carriers exchanging traffic off setting the cost of a minute in both directions to achieve a net cost of zero. HD Tandem added that the latter of the two was the preferred form of bill-and-keep, as well as the only sustainable form of bill-and-keep.

HD Tandem also discussed the unfairness of 3:1 triggers when carriers do not allow access to their networks and that by doing so they have not put themselves in the best negotiating circumstances but that they could change that at any point in time and receive the fairest most just and reasonable rates as per numerous economists.

Finally, we discussed the shift of voice from traditional phone to applications, the non-geographic nature of applications and the robust exchange that is waiting for access. We discussed the work that HD Tandem has done to eliminate arbitrage in the free market, as well as its efforts to become the first bill-and-keep intermediary in the marketplace.

Respectfully Submitted,

/s/ David Erickson
David Erickson

cc: Irina Asoskov
Susan Bahr
Allison Baker
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